

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
CLERK

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NATOSHA DUNSTON,

Plaintiff,

v.

DEVENDRA PATEL, M.D., MOUNT SINAI
HEALTH NETWORK, LLC, MOUNT SINAI
BETH ISRAEL MEDICAL CENTER, BETH
ISRAEL MEDICAL CENTER, THOMAS
BERNIK, M.D., LAUREN BARLOG, M.D.,
DONNIE BEAUBRUN, M.D., THE
BROOKLYN HOSPITAL CENTER, and,
PETER PAPPAS, M.D.,

Defendants.

Civil Action No. 17-CV-

CV 17-7136
(, M.J.)

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

NOTICE OF REMOVAL

GERSHON, J.

ORENSTEIN, M.J.

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK:

PLEASE TAKE NOTICE that an action pending in the Supreme Court of the State of New York, County of Kings, has been removed to the United States District Court for the Eastern District of New York.

BRIDGET M. ROHDE, Acting United States Attorney for the Eastern District of New York, by DARA A. OLDS, Assistant United States Attorney, of counsel, respectfully states the following facts upon information and belief:

1. The above-captioned action was commenced in the Supreme Court of the State of New York, County of Kings, Index No. 520070/2016, and names as defendants DEVENDRA PATEL, M.D., MOUNT SINAI HEALTH NETWORK, LLC, MOUNT SINAI BETH ISRAEL MEDICAL CENTER, BETH ISRAEL MEDICAL CENTER, THOMAS BERNIK, M.D., LAUREN BARLOG, M.D., DONNIE BEAUBRUN, M.D., THE BROOKLYN HOSPITAL

CENTER, and, PETER PAPPAS, M.D. *See* Summons and Verified Complaint, dated November 14, 2016, and annexed hereto as Exhibit A.

2. On or about January 12, 2017, defendants The Brooklyn Hospital Center and Peter Pappas, M.D. filed a Verified Answer in the Supreme Court of the State of New York. *See* Verified Answer, annexed hereto as Exhibit B.

3. On or about January 13, 2017, defendants Beth Israel Medical Center, Beth Israel Medical Center s/h/a “Mount Sinai Beth Israel Medical Center,” and Devendra Patel, M.D. filed a Verified Answer in the Supreme Court of the State of New York. *See* Verified Answer, annexed hereto as Exhibit C.

4. On or about February 17, 2017, defendant Thomas Bernik, M.D. filed a Verified Answer in the Supreme Court of the State of New York. *See* Verified Answer, annexed hereto as Exhibit D.

5. On or about March 20, 2017, defendant Donnie Beaubrun, M.D. filed a Verified Answer in the Supreme Court of the State of New York. *See* Verified Answer, annexed hereto as Exhibit E.

6. On or about April 7, 2017, defendant Lauren Barlog, M.D. filed a Verified Answer in the Supreme Court of the State of New York. *See* Verified Answer, annexed hereto as Exhibit F.

7. This action alleges medical malpractice on the part of the defendants. Specifically, the complaint alleges that from on or about 2013, up to and including October 4, 2015, defendants were negligent in the administration of proper primary, emergency, surgical, hematologic, gynecologic, pulmonary, hepatic, and/or radiographic care. *See generally* Exhibit A, Complaint.

8. At all relevant times articulated in the Complaint, defendant

Donnie Beaubrun, M.D. was an employee of William F. Ryan Community Health Center, Inc. (“Health Center”), a federally supported health center and deemed by the Department of Health and Human Services, pursuant to the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233(g)-(n) (“FSHCAA”), eligible for coverage under the Federal Tort Claims Act, and was acting within the course and scope of such deemed employment with the United States of America. *See* Declaration of Meredith Torres, annexed hereto as Exhibit G.

9. At all relevant times articulated in the Complaint, defendant Donnie Beaubrun, M.D., as an employee of the Health Center, was deemed, pursuant to 42 U.S.C. § 233(g)-(h), eligible for coverage under the Federal Tort Claims Act, and was acting within the course and scope of such deemed employment with the United States of America. *See* Certification of Scope of Employment and Notice of Substitution of the United States of America by Assistant U.S. Attorney Dara A. Olds, dated December 7, 2017, attached hereto as Exhibit H.

10. Pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d), this action may be removed to this Court because the Verified Complaint purports to assert claims against the United States of America, by way of defendant Donnie Beaubrun, M.D., and purports to raise matters under federal law.

11. Pursuant to 42 U.S.C. § 233(c), 28 U.S.C. § 2679, 28 C.F.R. § 15.4, and the Certification of Scope of Employment, the United States of America is substituted as the party defendant for defendant Donnie Beaubrun, M.D. *See* Certification of Scope of Employment (Exhibit H).

12. Pursuant to 28 U.S.C. §§ 2408 and 2679(d)(2) and 42 U.S.C. § 233(c), the United States of America may remove this action without a bond.

13. The United States Attorney’s Office has not yet been served with the Summons and

Verified Complaint in this action.


14. In accordance with 28 U.S.C. § 1446(d), the filing of a copy of this Notice with the Clerk of the Court, Supreme Court of the State of New York, County of Kings, shall affect the removal and the local court shall proceed no further with respect to the action, unless and until the case is remanded.

WHEREFORE, it is respectfully requested that the above-captioned action that is pending in the Supreme Court for the State of New York, County of Kings be removed to his Court.

Dated: Brooklyn, New York
December 7, 2017

Respectfully submitted,

BRIDGET M. ROHDE
Acting United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

By: 
DARA A. OLDS
Assistant United States Attorney
(718) 254-6148
dara.olds@usdoj.gov

To: Clerk of the Court (by ECF)
Supreme Court of the State of New York
County of Kings
360 Adams Street
Brooklyn, New York 11201

Jordan K. Merson, Esq. (by ECF and Federal Express)
MERSON LAW, PLLC
150 East 58th Street, 34th Floor
New York, New York 10155
(212) 603-9100
Attorneys for Plaintiff

Steven D. Weiner, Esq. (by ECF and Federal Express)
KAUFMAN, BORGEEST & RYAN LLP
200 Summit Lake Drive
Valhalla, New York 10595
(914) 449-1000
Attorneys for Defendants
The Brooklyn Hospital Center and Peter Pappas, M.D.

Andrew I. Kaplan, Esq. (by ECF and Federal Express)
Sean G. Shirali, Esq.
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600 Third Avenue
New York, New York 10016
(212) 593-6700
Attorneys for Defendants Devendra Patel, M.D., Thomas Bernik, M.D.,
Lauren Barlog, M.D., Beth Israel Medical Center, and
Beth Israel Medical Center s/h/a "Mount Sinai Beth Israel Medical Center"

Jordan B. Karp, Esq. (by ECF and Federal Express)
FUMOSO, KELLY, SWART, FARRELL, POLIN & CHRISTESEN, LLP
110 Marcus Boulevard
Happauge, New York 11788
(631) 232-0200
Attorneys for Defendant Donnie Beaubrun, M.D.

Exhibit A

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

-----X
NATOSHA DUNSTON,

Plaintiff,

-against -

Index No: _____/2016
Plaintiff designates Kings
County as the venue for trial.

DEVENDRA PATEL, M.D., MOUNT SINAI
HEALTH NETWORK, LLC, MOUNT SINAI
BETH ISRAEL MEDICAL CENTER, BETH
ISRAEL MEDICAL CENTER, THOMAS BERNIK
M.D., LAUREN BARLOG, M.D., DONNIE
BEAUBRUN, M.D., THE BROOKLYN HOSPITAL
CENTER, and, PETER PAPPAS, M.D.,

Defendants.

SUMMONS

Venue is based on
plaintiff's residence,
defendants' principal
places of business and
location of negligent acts.

Plaintiff's address is
40 Vanderbilt Avenue
Brooklyn, NY 11205

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To the above named defendant (s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York): and in case your failure to appear or answer, judgement will be taken for the relief demanded herein.

A COPY OF THIS SUMMONS WAS FILED WITH THE CLERK OF THE COURT, KINGS COUNTY ON _____ IN COMPLIANCE WITH CPLR §§305(a) AND 306(a).

Dated: New York, New York
November 14, 2016

MERSON LAW, PLLC

By: _____

Jordan Merson
Jordan K. Merson
Attorney for Plaintiffs
150 East 58th Street 34th Floor
New York, New York 10155
(212) 603-9100

TO:

DEVENDRA PATEL, M.D.,

**10 Union Square East, Suite 2B
New York, NY 10003**

**MOUNT SINAI HEALTH NETWORK,
LLC, C/O MOUNT SINAI HEALTH
SYSTEM**

**One Gustave L. Levy Place, Box 1099
New York, NY 10029**

**MOUNT SINAI BETH ISRAEL
MEDICAL CENTER**

**10 Nathan D. Perlman Place
New York, NY 10003**

BETH ISRAEL MEDICAL CENTER,

**10 Nathan D. Perlman Place
New York, NY 10003**

THOMAS BERNIK, M.D.,

**317 East 17th Street, 12th Floor
New York, NY 10003**

LAUREN BARLOG, M.D.,

**185 South Orange Avenue, #F538
Newark, NJ 07103**

DONNIE BEAUBRUN, M.D.,

**279 East 3rd Street
New York, NY 10009**

THE BROOKLYN HOSPITAL CENTER

**121 Dekalb Avenue
Brooklyn, NY 11201**

PETER PAPPAS, M.D.,

**90 Bergen Street, Ste. 7100
Newark, NJ 07103**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

-----X
NATOSHA DUNSTON,

INDEX NO. _____/2016

Plaintiff,

-against -

VERIFIED COMPLAINT

**DEVENDRA PATEL, M.D., MOUNT SINAI
HEALTH NETWORK, LLC, MOUNT SINAI
BETH ISRAEL MEDICAL CENTER, BETH
ISRAEL MEDICAL CENTER, THOMAS BERNIK,
M.D., LAUREN BARLOG, M.D., DONNIE
BEAUBRUN, M.D., THE BROOKLYN HOSPITAL
CENTER, and, PETER PAPPAS, M.D.,**

Defendants.

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Plaintiff(s), above named, complaining of the defendants, by **MERSON LAW, PLLC.**,
respectfully allege(s) upon information and belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times herein mentioned, defendant **DEVENDRA PATEL, M.D.**, was and is a physician duly licensed to practice medicine in the State of New York.
2. At all times herein mentioned, plaintiff **NATOSHA DUNSTON** was a patient of defendant **DEVENDRA PATEL, M.D.**
3. At all times herein mentioned, plaintiff **NATOSHA DUNSTON** was a patient of defendant **MOUNT SINAI HEALTH NETWORK, LLC.**
4. At all times herein mentioned, defendant **MOUNT SINAI HEALTH NETWORK, LLC**, was the owner of a Hospital known as **MOUNT SINAI BETH ISRAEL MEDICAL**

CENTER and/or **BETH ISRAEL MEDICAL CENTER** located at 10 Nathan D Perlman Place, New York, New York 10003.

5. At all times herein mentioned, defendant **MOUNT SINAI HEALTH NETWORK, LLC**, controlled, managed, owned, operated and/or supervised the aforesaid Hospital.

6. At all times herein mentioned, all of the physicians, nurses and medical personnel involved in the medical diagnoses, care and treatment of plaintiff **NATOSHA DUNSTON** were agents, servants and/or employees of defendant **MOUNT SINAI HEALTH NETWORK, LLC**.

7. At all times herein mentioned, defendant **BETH ISRAEL MEDICAL CENTER** was the owner of a Hospital known as **MOUNT SINAI BETH ISRAEL MEDICAL CENTER** located at 10 Nathan D Perlman Place, New York, New York 10003.

8. At all times herein mentioned, defendant **MOUNT SINAI BETH ISRAEL MEDICAL CENTER** controlled, managed, owned, operated and/or supervised the aforesaid Hospital.

9. At all times herein mentioned, plaintiff **NATOSHA DUNSTON** was a patient of defendant **MOUNT SINAI BETH ISRAEL MEDICAL CENTER**.

10. At all times herein mentioned, all of the physicians, nurses and medical personnel involved in the medical diagnoses, care and treatment of plaintiff **NATOSHA DUNSTON** were agents, servants and/or employees of defendant **MOUNT SINAI BETH ISRAEL MEDICAL CENTER**.

11. At all times herein mentioned, defendant **BETH ISRAEL MEDICAL CENTER** was the owner of a Hospital known as **BETH ISRAEL MEDICAL CENTER** located at 10 Nathan D Perlman Place, New York, New York 10003.

12. At all times herein mentioned, defendant **BETH ISRAEL MEDICAL CENTER** controlled, managed, owned, operated and/or supervised the aforesaid Hospital.

13. At all times herein mentioned, plaintiff **NATOSHA DUNSTON** was a patient of defendant **BETH ISRAEL MEDICAL CENTER**.

14. At all times herein mentioned, all of the physicians, nurses and medical personnel involved in the medical diagnoses, care and treatment of plaintiff **NATOSHA DUNSTON** were agents, servants and/or employees of defendant **BETH ISRAEL MEDICAL CENTER**.

15. At all times herein mentioned, defendants **MOUNT SINAI HEALTH NETWORK, LLC, MOUNT SINAI BETH ISRAEL MEDICAL CENTER** and/or **BETH ISRAEL MEDICAL CENTER** were the same entity and/or were operated, managed and/or controlled as a same entity and/or are and were alter egos of one another and each other.

16. At all times herein mentioned, defendant **THOMAS BERNIK, M.D.**, was and is a physician duly licensed to practice medicine in the State of New York.

17. At all times herein mentioned, plaintiff **NATOSHA DUNSTON** was a patient of defendant **THOMAS BERNIK, M.D.**

18. At all times herein mentioned, defendant **LAUREN BARLOG, M.D.**, was and is a physician duly licensed to practice medicine in the State of New York.

19. At all times herein mentioned, plaintiff **NATOSHA DUNSTON** was a patient of defendant **LAUREN BARLOG, M.D.**

20. At all times herein mentioned, defendant **DONNIE BEAUBRUN, M.D.**, was and is a physician duly licensed to practice medicine in the State of New York.

21. At all times herein mentioned, plaintiff **NATOSHA DUNSTON** was a patient of defendant **DONNIE BEAUBRUN, M.D.**

22. At all times herein mentioned, defendants **DEVENDRA PATEL, M.D., THOMAS BERNIK, M.D., LAUREN BARLOG, M.D., and, DONNIE BEAUBRUN, M.D.**, were agents, servants and/or employees of **MOUNT SINAI HEALTH NETWORK, LLC**.

23. At all times herein mentioned, defendants **DEVENDRA PATEL, M.D., THOMAS BERNIK, M.D., LAUREN BARLOG, M.D., and, DONNIE BEAUBRUN, M.D.**, were agents, servants and/or employees of **MOUNT SINAI BETH ISRAEL MEDICAL CENTER**.

24. At all times herein mentioned, defendants **DEVENDRA PATEL, M.D., THOMAS BERNIK, M.D., LAUREN BARLOG, M.D., and, DONNIE BEAUBRUN, M.D.**, were agents, servants and/or employees of **BETH ISRAEL MEDICAL CENTER**.

25. At all times herein mentioned, defendants **DEVENDRA PATEL, M.D., MOUNT SINAI HEALTH NETWORK, LLC, MOUNT SINAI BETH ISRAEL MEDICAL CENTER, BETH ISRAEL MEDICAL CENTER, THOMAS BERNIK, M.D., LAUREN BARLOG, M.D., and, DONNIE BEAUBRUN, M.D.**, and other doctors, nurses, residents, medical personnel and staff at defendant **MOUNT SINAI HEALTH NETWORK, LLC**, were agents, servants and/or employees of each other regarding their care, treatment and diagnosis for plaintiff **NATOSHA DUNSTON**.

26. At all times herein mentioned, defendants **DEVENDRA PATEL, M.D., MOUNT SINAI HEALTH NETWORK, LLC, BETH ISRAEL MEDICAL CENTER, THOMAS BERNIK, M.D., LAUREN BARLOG, M.D., and, DONNIE BEAUBRUN, M.D.,** and other doctors, nurses, residents, medical personnel and staff at defendant **MOUNT SINAI BETH ISRAEL MEDICAL CENTER** were agents, servants and/or employees of each other regarding their care, treatment and diagnosis for plaintiff **NATOSHA DUNSTON**.

27. At all times herein mentioned, defendants **DEVENDRA PATEL, M.D., MOUNT SINAI HEALTH NETWORK, LLC, MOUNT SINAI BETH ISRAEL MEDICAL CENTER, THOMAS BERNIK, M.D., LAUREN BARLOG, M.D., and, DONNIE BEAUBRUN, M.D.,** and other doctors, nurses, residents, medical personnel and staff at defendant **BETH ISRAEL MEDICAL CENTER** were agents, servants and/or employees of each other regarding their care, treatment and diagnosis for plaintiff **NATOSHA DUNSTON**.

28. At all times herein mentioned, defendant **THE BROOKLYN HOSPITAL CENTER** was the owner of a Hospital known as **THE BROOKLYN HOSPITAL CENTER** located at 121 DeKalb Avenue, Brooklyn, New York 11201.

29. At all times herein mentioned, defendant **THE BROOKLYN HOSPITAL CENTER CENTER** controlled, managed, owned, operated and/or supervised the aforesaid Hospital.

30. At all times herein mentioned, plaintiff **NATOSHA DUNSTON** was a patient of defendant **THE BROOKLYN HOSPITAL CENTER**.

31. At all times herein mentioned, all of the physicians, nurses and medical personnel involved in the medical diagnoses, care and treatment of plaintiff **NATOSHA DUNSTON**

were agents, servants and/or employees of defendant **THE BROOKLYN HOSPITAL CENTER**.

32. At all times herein mentioned, defendant **PETER PAPPAS, M.D.**, was and is a physician duly licensed to practice medicine in the State of New York.

33. At all times herein mentioned, plaintiff **NATOSHA DUNSTON** was a patient of defendant **PETER PAPPAS, M.D.**

34. At all times herein mentioned, defendant **PETER PAPPAS, M.D.**, was an agent, servant and/or employee of **THE BROOKLYN HOSPITAL CENTER**.

35. At all times herein mentioned, defendants **DEVENDRA PATEL, M.D., MOUNT SINAI HEALTH NETWORK, LLC, MOUNT SINAI BETH ISRAEL MEDICAL CENTER, BETH ISRAEL MEDICAL CENTER, THOMAS BERNIK, M.D., LAUREN BARLOG, M.D., DONNIE BEAUBRUN, M.D., THE BROOKLYN HOSPITAL CENTER, and, PETER PAPPAS, M.D.**, were partners in the practice of medicine with respect to the medical care, treatment and diagnosis for plaintiff **NATOSHA DUNSTON**.

36. At all times herein mentioned, all of the physicians, residents, nurses and other personnel involved in the diagnosis, care and treatment of the plaintiff **NATOSHA DUNSTON** were agents, servants and/or employees of each other with regard to the medical diagnosis, care and treatment rendered to the plaintiff **NATOSHA DUNSTON**.

37. Beginning in or about 2013 and continuing thereafter through a continuous course of treatment to and including on or about October 4, 2015, plaintiff **NATOSHA DUNSTON** was a patient of defendant **DEVENDRA PATEL, M.D., MOUNT SINAI HEALTH NETWORK, LLC, MOUNT SINAI BETH ISRAEL MEDICAL CENTER, BETH**

ISRAEL MEDICAL CENTER, and, LAUREN BARLOG, M.D., and/or their agents, servants and/or employees, and beginning on or about September 22, 2015 and continuing thereafter through on or about September 28, 2015, plaintiff NATOSHA DUNSTON was admitted to MOUNT SINAI HEALTH NETWORK, LLC, MOUNT SINAI BETH ISRAEL MEDICAL CENTER, and, BETH ISRAEL MEDICAL CENTER, under the medical care, diagnoses and treatment of defendants DEVENDRA PATEL, M.D., MOUNT SINAI HEALTH NETWORK, LLC, MOUNT SINAI BETH ISRAEL MEDICAL CENTER, BETH ISRAEL MEDICAL CENTER, THOMAS BERNIK, M.D., LAUREN BARLOG, M.D., and, DONNIE BEAUBRUN, M.D., and/or their agents, servants and/or employees, and as a result of these defendants' failure to timely and/or properly treat plaintiff NATOSHA DUNSTON, including, but not limited to, the failure to render timely and/or proper primary, emergency, surgical, hematologic, gynecologic, pulmonary, hepatic, and/or radiographic care, including, but not limited to, the improper performing of a total abdominal hysterectomy, in failing to timely diagnose and/or treat hemorrhaging, in failing to diagnose and/or treat deep vein thrombosis, and in failing to timely diagnose and/or treat heparin induced thrombocytopenia, plaintiff NATOSHA DUNSTON sustained severe, serious and permanent injuries.

38. Beginning on or about October 4, 2015 and continuing thereafter through a continuous course of treatment to and including on or about November 3, 2015, plaintiff **NATOSHA DUNSTON** was admitted to defendant **THE BROOKLYN HOSPITAL CENTER** and during the aforesaid admission, plaintiff **NATOSHA DUNSTON** was under the medical care, diagnoses and treatment of defendants **THE BROOKLYN HOSPITAL CENTER, and,**

PETER PAPPAS, M.D., and/or their agents, servants and/or employees, and as a result of these defendants' failure to timely and/or properly treat plaintiff **NATOSHA DUNSTON**, including, but not limited to, the failure to render timely and/or proper primary, emergency, surgical, pulmonary, hematologic, hepatic, and/or radiographic care, and the failure to timely and/or properly treat deep vein thrombosis and heparin induced thrombocytopenia, plaintiff **NATOSHA DUNSTON** sustained severe, serious and permanent injuries.

39. Said occurrence was due to the carelessness and negligence of the defendants and/or their agents, servants and/or employees, in failing to render good and proper primary, emergency, hepatic, gynecologic, pulmonary, radiographic, interventional radiology, surgical and/or medical care, and in failing to treat plaintiff **NATOSHA DUNSTON** in the accepted and proper medical manner and all without any fault or lack of care of the plaintiff.

40. By reason of the foregoing carelessness and negligence of the defendants, their agents, servants and/or employees, plaintiff **NATOSHA DUNSTON** sustained severe and serious personal injuries, a severe shock to her nervous system and certain internal injuries and was caused to suffer severe physical pain and mental anguish as a result thereof, and upon information and belief and these injuries of a permanent and lasting nature; that plaintiff was confined to her bed, home and medical institutions as a result thereof, and was incapacitated from attending to her regular activities, and there is was caused to be expended sum of money for the medical and hospital care on her behalf.

41. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

42. This action falls within exceptions to Article 16 of the C.P.L.R.

AS AND FOR SECOND OF ACTION
FOR LACK OF INFORMED CONSENT

43. Plaintiff(s) repeat(s), reiterate(s), and reallege(s) each and every allegation contained in those paragraphs of complaint marked and designated 1. through 42., inclusive, with the same force and effect as if hereafter set forth at length.

44. The defendant failed to inform the plaintiff of the risks, hazards and alternatives connected with the procedures utilized and treatment rendered so that an informed consent could be given.

45. That reasonable prudent persons in the plaintiff's position would not have undergone the procedures utilized and treatment rendered if he had been fully informed of the risks, hazards and connected with said procedures and treatments.

46. The failure to adequately and fully inform plaintiff of the risks, hazards and alternatives of the procedures utilized and treatment rendered was a proximate cause of the injuries plaintiff sustained.

47. That as a consequence of the foregoing there was no informed consent to the procedures utilized and treatment rendered to plaintiff.

48. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

49. This action falls within exceptions to Article 16 of the C.P.L.R.

**AS AND FOR A THIRD CAUSE OF ACTION
AS TO MOUNT SINAI HEALTH NETWORK, LLC**

50. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in those paragraphs of the complaint marked and designated 1. through 49., inclusive, with the same force and effect as if hereafter set forth at length.

51. Defendant, **MOUNT SINAI HEALTH NETWORK, LLC** prior to granting or renewing employment of the doctors, nurses, residents, medical staff and others involved in plaintiff's care failed to investigate the qualifications, competence, capacity, abilities and capabilities of said defendants, doctors, nurses, residents, medical staff and others, including but not limited to obtaining the following information: patient grievances, negative health care outcomes, incidents injurious to patients, medical malpractice actions commenced against said persons, including the outcome thereof, any history of association, privilege and/or practice at other institutions, any discontinuation of said association, employment, privilege and/or practice at said institution, and any pending professional misconduct proceedings in this State or another State, the substance of the allegations in such proceedings and any additional information concerning such proceedings and the findings of such proceedings and the hospital failed to make sufficient inquiry of physicians, residents, nurses and staff which should and did have information relevant to the capacity, capability, ability and competence of said persons rendering treatment.

52. Had defendant, **MOUNT SINAI HEALTH NETWORK, LLC**, made the above stated inquiry, or in the alternative, had defendant reviewed and analyzed the information obtained in a proper manner, employment would not have been granted and/or renewed.

53. **MOUNT SINAI HEALTH NETWORK, LLC**, was additionally negligent in making, or failing to make, rules and regulations for, plaintiff's conditions and failed to supervise, the treatment of the plaintiff.

54. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

55. This action falls within exceptions to Article 16 of the C.P.L.R.

**AS AND FOR A FOURTH CAUSE OF ACTION
AS TO MOUNT SINAI BETH ISRAEL MEDICAL CENTER**

56. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in those paragraphs of the complaint marked and designated 1. through 55., inclusive, with the same force and effect as if hereafter set forth at length.

57. Defendant, **MOUNT SINAI BETH ISRAEL MEDICAL CENTER** prior to granting or renewing employment of the doctors, nurses, residents, medical staff and others involved in plaintiff's care failed to investigate the qualifications, competence, capacity, abilities and capabilities of said defendants, doctors, nurses, residents, medical staff and others, including but not limited to obtaining the following information: patient grievances, negative health care outcomes, incidents injurious to patients, medical malpractice actions commenced against said persons, including the outcome thereof, any history of association, privilege and/or practice at other institutions, any discontinuation of said association, employment, privilege and/or practice at said institution, and any pending professional misconduct proceedings in this State or another State, the substance of the allegations in such proceedings and any additional information concerning such proceedings and the findings of such proceedings and the hospital failed to make sufficient inquiry of physicians, residents, nurses and staff which should and did

have information relevant to the capacity, capability, ability and competence of said persons rendering treatment.

58. Had defendant, **MOUNT SINAI BETH ISRAEL MEDICAL CENTER** made the above stated inquiry, or in the alternative, had defendant reviewed and analyzed the information obtained in a proper manner, employment would not have been granted and/or renewed.

59. **MOUNT SINAI BETH ISRAEL MEDICAL CENTER** was additionally negligent in making, or failing to make, rules and regulations for, plaintiff's conditions and failed to supervise, the treatment of the plaintiff.

60. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

61. This action falls within exceptions to Article 16 of the C.P.L.R.

**AS AND FOR A FIFTH CAUSE OF ACTION
AS TO BETH ISRAEL MEDICAL CENTER**

62. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in those paragraphs of the complaint marked and designated 1. through 61., inclusive, with the same force and effect as if hereafter set forth at length.

63. Defendant, **BETH ISRAEL MEDICAL CENTER** prior to granting or renewing employment of the doctors, nurses, residents, medical staff and others involved in plaintiff's care failed to investigate the qualifications, competence, capacity, abilities and capabilities of said defendants, doctors, nurses, residents, medical staff and others, including but not limited to obtaining the following information: patient grievances, negative health care outcomes, incidents injurious to patients, medical malpractice actions commenced against said persons,

including the outcome thereof, any history of association, privilege and/or practice at other institutions, any discontinuation of said association, employment, privilege and/or practice at said institution, and any pending professional misconduct proceedings in this State or another State, the substance of the allegations in such proceedings and any additional information concerning such proceedings and the findings of such proceedings and the hospital failed to make sufficient inquiry of physicians, residents, nurses and staff which should and did have information relevant to the capacity, capability, ability and competence of said persons rendering treatment.

64. Had defendant, **BETH ISRAEL MEDICAL CENTER** made the above stated inquiry, or in the alternative, had defendant reviewed and analyzed the information obtained in a proper manner, employment would not have been granted and/or renewed.

65. **BETH ISRAEL MEDICAL CENTER** was additionally negligent in making, or failing to make, rules and regulations for, plaintiff's conditions and failed to supervise, the treatment of the plaintiff.

66. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

67. This action falls within exceptions to Article 16 of the C.P.L.R.

**AS AND FOR A SIXTH CAUSE OF ACTION
AS TO THE BROOKLYN HOSPITAL CENTER**

68. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in those paragraphs of the complaint marked and designated 1. through 67., inclusive, with the same force and effect as if hereafter set forth at length.

69. Defendant, **THE BROOKLYN HOSPITAL CENTER**, prior to granting or renewing employment of the doctors, nurses, residents, medical staff and others involved in plaintiff's care failed to investigate the qualifications, competence, capacity, abilities and capabilities of said defendants, doctors, nurses, residents, medical staff and others, including but not limited to obtaining the following information: patient grievances, negative health care outcomes, incidents injurious to patients, medical malpractice actions commenced against said persons, including the outcome thereof, any history of association, privilege and/or practice at other institutions, any discontinuation of said association, employment, privilege and/or practice at said institution, and any pending professional misconduct proceedings in this State or another State, the substance of the allegations in such proceedings and any additional information concerning such proceedings and the findings of such proceedings and the hospital failed to make sufficient inquiry of physicians, residents, nurses and staff which should and did have information relevant to the capacity, capability, ability and competence of said persons rendering treatment.

70. Had defendant, **THE BROOKLYN HOSPITAL CENTER**, made the above stated inquiry, or in the alternative, had defendant reviewed and analyzed the information obtained in a proper manner, employment would not have been granted and/or renewed.

71. **THE BROOKLYN HOSPITAL CENTER**, was additionally negligent in making, or failing to make, rules and regulations for, plaintiff's conditions and failed to supervise, the treatment of the plaintiff.

72. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

73. This action falls within exceptions to Article 16 of the C.P.L.R.

WHEREFORE, plaintiff demands judgement against defendants in such sum as a jury would find fair, adequate and just.

Dated: New York, New York
November 14, 2016

MERSON LAW, PLLC

By: 

Jordan K. Merson

Attorney for Plaintiff

150 East 58th Street 34th Floor

New York, New York 10155

(212) 603-9100

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

-----X
NATOSHA DUNSTON,

Plaintiff,

-against -

Index No.: _____/16

**CERTIFICATE OF
MERIT**

**DEVENDRA PATEL, M.D., MOUNT SINAI
HEALTH NETWORK, LLC, MOUNT SINAI
BETH ISRAEL MEDICAL CENTER, BETH
ISRAEL MEDICAL CENTER, THOMAS BERNIK,
M.D., LAUREN BARLOG, M.D., DONNIE
BEAUBRUN, M.D., THE BROOKLYN HOSPITAL
CENTER, and, PETER PAPPAS, M.D.,**

Defendants.
-----X

JORDAN K. MERSON, being duly sworn, deposes and states the following to be true
under the penalties of perjury of the State of New York.

I have reviewed the facts of this case and have consulted with at least one physician
who is licensed to practice medicine in the State of New York, or any other State, and who I
reasonably believe is knowledgeable in the relevant issues involved in this matter. I have
concluded on the basis of the review and the consultation that there is a reasonable basis for the
commencement of this action.

Dated: New York, New York
November 14, 2016

MERSON LAW, PLLC

By: 

Jordan K. Merson

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

-----X
NATOSHA DUNSTON,

Index No.: _____/16

Plaintiff,

-against -

ATTORNEY VERIFICATION

**DEVENDRA PATEL, M.D., MOUNT SINAI
HEALTH NETWORK, LLC, MOUNT SINAI
BETH ISRAEL MEDICAL CENTER, BETH
ISRAEL MEDICAL CENTER, THOMAS BERNIK,
M.D., LAUREN BARLOG, M.D., DONNIE
BEAUBRUN, M.D., THE BROOKLYN HOSPITAL
CENTER, and, PETER PAPPAS, M.D.,**

Defendants.
-----X

JORDAN K. MERSON, an attorney duly admitted to practice in the Courts of New York State, and a member of the firm MERSON LAW, PLLC, attorneys for the plaintiff(s) in the within action hereby affirms under penalty of perjury:

That he has read the within complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true,

That the sources of information and knowledge are investigations and records in the file. That the reason that this verification is made by affirmant and not by the plaintiff(s) is that the plaintiff(s) is/are not within the County where the attorney has his office.

Dated: New York, New York
November 14, 2016


JORDAN K. MERSON

Index No.

Year 2016

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

NATOSHA DUNSTON,

Plaintiff (s),

- against -

DEVENDRA PATEL, M.D., MOUNT SINAI HEALTH
NETWORK, LLC, MOUNT SINAI BETH ISRAEL
MEDICAL CENTER, BETH ISRAEL MEDICAL
CENTER, THOMAS BERNIK, M.D., LAUREN
BARLOG, M.D., DONNIE BEAUBRUN, M.D., THE
BROOKLYN HOSPITAL CENTER, and, PETER
PAPPAS, M.D.,

Defendant(s),

SUMMONS AND VERIFIED COMPLAINT

Merson Law, PLLC.

Attorneys for Plaintiff(s)

Office and Post Office Address, Telephone

150 East 58th Street 34th Fl.
New York, New York 10155
(212) 603-9100

To: All Parties

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
NATOSHA DUNSTON,
Individually,

Index No.: 520070/16

Plaintiff,

**VERIFIED ANSWER OF
THE BROOKLYN
HOSPITAL CENTER**

-against-

DEVENDRA PATEL, M.D., MOUNT SINAI HEALTH
NETWORK, LLC, MOUNT SINAI BETH ISRAEL
MEDICAL CENTER, THOMAS BERNICK, M.D.,
LAUREN BARLOG, M.D., DONNIE BEABURN, M.D.,
THE BROOKLYN HOSPITAL CENTER, and, PETER
PAPPAS, M.D.,

Defendants.
-----X

Defendant, **THE BROOKLYN HOSPITAL CENTER**, by its attorneys, KAUFMAN
BORGEESE & RYAN LLP, as and for its Verified Answer to plaintiffs' Verified Complaint states and
alleges upon information and belief:

AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION

1. Denies knowledge and information sufficient to form a belief as to each and every
allegation contained in the paragraphs designated as "1", "2", "3", "4", "5", "6", "7", "8", "9", "10",
"11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", and "27" of
the Verified Complaint, and begs leave to refer all questions of fact to the trier of fact and all
questions of law to the Court.

2. Denies in the form alleged each and every allegation contained in the paragraphs
designated as "28", "29", "30", "31", "32", "33", and "34" except admits that at certain times which
may or may not be specified in the Verified Complaint, Defendant **THE BROOKLYN HOSPITAL
CENTER** was and is a domestic not-for-profit corporation duly organized and existing under the
laws of the State of New York, operating a hospital at 121 Dekalb Avenue, Brooklyn, NY 11201,
where care and treatment was provided to the plaintiff **NATOSHA DUNSTON** in accordance

with good and accepted practice, on dates which may or may not be set forth in the Verified Complaint, and that Defendant **PETER PAPPAS, M.D.**, was and is a physician duly licensed under the laws of the State of New York, who at certain times, which may or may not be fully set forth in the Verified Complaint, was an attending surgeon at **THE BROOKLYN HOSPITAL CENTER**, and otherwise begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

3. Denies each and every allegation contained in the paragraphs designated as "35", "36", "38", "39", "40", "41", and "42" of the Verified Complaint.

4. Denies each and every allegation contained in the paragraph designated as "37" to the extent said allegations pertain to Defendants, **TBHC** and **PAPPAS**, and otherwise denies knowledge and information sufficient to form a belief as to each and every allegation, and begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION

5. With respect to that paragraph of the Verified Complaint designated as "43", defendant repeats, reiterates and re-alleges each and every admission, denial, and denial of truth of each and every allegation contained in those paragraphs designated as "1" through "42", with the same force and effect as if set forth fully herein.

6. Denies each and every allegation contained in the paragraphs designated as "44", "45", "46", "47", "48", and "49" of the Verified Complaint.

AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION

7. With respect to that paragraph of the Verified Complaint designated as "50", defendant repeats, reiterates and re-alleges each and every admission, denial, and denial of truth of each and every allegation contained in those paragraphs designated as "1" through "49", with the same force and effect as if set forth fully herein.

8. Denies knowledge and information sufficient to form a belief as to each and every allegation contained in the paragraphs designated as "51", "52", and "53" of the Verified

Complaint, and begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

9. Denies each and every allegation contained in the paragraphs designated as "54" and "55" as to defendant **THE BROOKLYN HOSPITAL CENTER**.

AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION

10. With respect to that paragraph of the Verified Complaint designated as "56", defendant repeats, reiterates and re-alleges each and every admission, denial, and denial of truth of each and every allegation contained in those paragraphs designated as "1" through "55", with the same force and effect as if set forth fully herein.

11. Denies knowledge and information sufficient to form a belief as to each and every allegation contained in the paragraphs designated as "57", "58", and "59" of the Verified Complaint, and begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

12. Denies each and every allegation contained in the paragraphs designated as "60" and "61" as to defendant **THE BROOKLYN HOSPITAL CENTER**.

AS AND FOR AN ANSWER TO THE FIFTH CAUSE OF ACTION

13. With respect to that paragraph of the Verified Complaint designated as "62", defendant repeats, reiterates and re-alleges each and every admission, denial, and denial of truth of each and every allegation contained in those paragraphs designated as "1" through "61", with the same force and effect as if set forth fully herein.

14. Denies knowledge and information sufficient to form a belief as to each and every allegation contained in the paragraphs designated as "63", "64", and "65" of the Verified Complaint, and begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

15. Denies each and every allegation contained in the paragraphs designated as "66" and "67" as to defendant **THE BROOKLYN HOSPITAL CENTER**.

AS AND FOR AN ANSWER TO THE SIXTH CAUSE OF ACTION

16. With respect to that paragraph of the Verified Complaint designated as "68", defendant repeats, reiterates and re-alleges each and every admission, denial, and denial of truth of each and every allegation contained in those paragraphs designated as "1" through "67", with the same force and effect as if set forth fully herein.

17. Denies each and every allegation contained in the paragraphs designated as "69", "70", "71", and "72".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

18. That pursuant to CPLR §1600 et seq., if it is determined by verdict or decision that two or more tortfeasors are jointly liable to the plaintiff, and if the liability of the answering defendant, **THE BROOKLYN HOSPITAL CENTER**, is found to be 50% or less of the total liability assigned to all persons liable, the liability of the answering defendant to the plaintiff for non-economic loss shall not exceed this defendant's equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

19. Upon information and belief, whatever damages the plaintiff may have sustained at the time(s) and place(s) mentioned in the Verified Complaint were caused in whole or in part by the culpable conduct of plaintiff. As a result, the amount of damages recovered, if any, shall therefore be diminished in the proportion to which said culpable conduct is attributable.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

20. In the event said plaintiff recovers a verdict or judgment against the answering defendant, **THE BROOKLYN HOSPITAL CENTER**, said verdict or judgment should be reduced pursuant to CPLR § 4545 by those amounts which have been or will, with reasonable certainty, replace or indemnify plaintiff in whole or in part for any past or future claim to economic loss or collateral source.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

21. The negligence of those responsible for the accident or the occurrence alleged in the Verified Complaint constituted a separate, independent, superseding, intervening act, which constitutes the sole proximate cause of the accident or occurrence alleged.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

22. Upon information and belief, the injuries and damages alleged were caused by the culpable conduct of some third person or persons over whom the answering defendant, **THE BROOKLYN HOSPITAL CENTER**, neither had nor exercised control.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

23. That if the plaintiff was caused to sustain damages at the time and place set forth in plaintiff's Complaint through any carelessness, recklessness and negligence other than plaintiff's own, said damages arose in whole or in part from the negligence of co-defendant(s) or others, and if any judgment is recovered herein by the plaintiff against the answering defendant, **THE BROOKLYN HOSPITAL CENTER**, than the answering defendant will be entitled to contribution on the basis of proportionate responsibility attributable to the co-defendant(s) named above.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

24. Pursuant to Section 15-108 of the General Obligations Law, any recovery by the Plaintiff must be reduced by such amounts and/or such percentages of negligence as may result from settlements or trial with any tortfeasor or others.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

25. The Verified Complaint fails to state a cause or causes of action upon which relief can be granted against the Answering Defendant.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

26. Plaintiff's claims are barred, or subject to reduction, as a result of the Plaintiff's failure to mitigate its damages.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

27. Plaintiffs' claim for lack of informed consent is barred by reason of the applicable provisions of Section 2805(d) of the Public Health Law.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

28. Upon information and belief, whatever damages, if any, suffered by the Plaintiff have been set-off by a prior recovery.

WHEREFORE, Defendant, **THE BROOKLYN HOSPITAL CENTER**, demands judgment dismissing the Verified Complaint of the Plaintiff, together with the costs and disbursements of this action.

To the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of this paper or the contentions herein are not frivolous, as that term is defined in Part 130 of the Court Rules.

Dated: Valhalla, New York
January 9, 2017

Yours, etc.,


KAUFMAN BORGESST & RYAN LLP

By: Steven D. Weiner, Esq.
Attorneys for Defendant
THE BROOKLYN HOSPITAL CENTER
200 Summit Lake Drive
Valhalla, New York 10595
(914) 449-1000
KBR File No.: 766.116

TO: **MERSON LAW PLLC**
Attorneys for Plaintiffs
150 East 58th Street 34th Fl.
New York, NY 10155
212-603-9100

Devendra Patel, M.D.
10 Union Square East, Suite 2B
New York, NY 10003

Mount Sinai Health Network
c/o Mount Sinai Health System
One Gustave L. Levy Place, Box 1009
New York, NY 10029

Mount Sinai Beth Israel Medical Center
10 Nathan D. Perlman Place
New York, NY 10003

Thomas Bernik, M.D.
317 East 17th Street, 12th Floor
New York, NY 10003

Lauren Barlog, M.D.
185 South Orange Avenue, #F538
Newark, NJ 07103

Donnie Beaubrun, M.D.
279 East 3rd Street
New York, NY 10009

VERIFICATION

STATE OF NEW YORK)
COUNTY OF WESTCHESTER)

STEVEN D. WEINER, being duly sworn, states that I am a member of the firm of **KAUFMAN BORGEEST & RYAN LLP**, attorneys for Defendant, **THE BROOKLYN HOSPITAL CENTER** in this action and that the foregoing **VERIFIED ANSWER** is true to my knowledge, except as to those matters therein stated upon information and belief, and as to those matters I believe them to be true; that the grounds of my belief as to all matters not stated upon my knowledge are correspondence and other writings furnished by the Defendant and other documents maintained in the office of its attorneys; and that the reason why this verification is not made by Defendant is that the Defendant is located in a county other than the county where its attorneys have their office.

Dated: Valhalla, New York
January 9, 2017

A handwritten signature in black ink, appearing to read 'Steven D. Weiner', is written over a horizontal line.

STEVEN D. WEINER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
NATOSHA DUNSTON,
Individually,

Index No.: 520070/16

Plaintiff,

**VERIFIED ANSWER OF
PETER PAPPAS, M.D.**

-against-

DEVENDRA PATEL, M.D., MOUNT SINAI HEALTH
NETWORK, LLC, MOUNT SINAI BETH ISRAEL
MEDICAL CENTER, THOMAS BERNICK, M.D.,
LAUREN BARLOG, M.D., DONNIE BEABURN, M.D.,
THE BROOKLYN HOSPITAL CENTER, and, PETER
PAPPAS, M.D.,

Defendants.
-----X

Defendant, **PETER PAPPAS, M.D.**, by his attorneys, KAUFMAN BORGEESE & RYAN
LLP, as and for his Verified Answer to plaintiffs' Verified Complaint states and alleges upon
information and belief:

1. Denies knowledge and information sufficient to form a belief as to each and every
allegation contained in the paragraphs designated as "1", "2", "3", "4", "5", "6", "7", "8", "9", "10",
"11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", and "27" of
the Verified Complaint, and begs leave to refer all questions of fact to the trier of fact and all
questions of law to the Court.

2. Denies in the form alleged each and every allegation contained in the paragraphs
designated as "28", "29", "30", "31", "32", "33", and "34" except admits that at certain times which
may or may not be specified in the Verified Complaint, Defendant **THE BROOKLYN HOSPITAL
CENTER** was and is a domestic not-for-profit corporation duly organized and existing under the
laws of the State of New York, operating a hospital at 121 Dekalb Avenue, Brooklyn, NY 11201,
where care and treatment was provided to the plaintiff **NATOSHA DUNSTON** in accordance
with good and accepted practice, on dates which may or may not be set forth in the Verified
Complaint, and that Defendant **PETER PAPPAS, M.D.**, was and is a physician duly licensed

3799288

under the laws of the State of New York, who at certain times, which may or may not be fully set forth in the Verified Complaint, was an attending surgeon at **THE BROOKLYN HOSPITAL CENTER**, and otherwise begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

3. Denies each and every allegation contained in the paragraphs designated as "35", "36", "38", "39", "40", "41", and "42" of the Verified Complaint.

4. Denies each and every allegation contained in the paragraph designated as "37" to the extent said allegations pertain to Defendants, **THE BROOKLYN HOSPITAL CENTER** and **PAPPAS**, and otherwise denies knowledge and information sufficient to form a belief as to each and every allegation, and begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION

5. With respect to that paragraph of the Verified Complaint designated as "43", defendant repeats, reiterates and re-alleges each and every admission, denial, and denial of truth of each and every allegation contained in those paragraphs designated as "1" through "42", with the same force and effect as if set forth fully herein.

6. Denies each and every allegation contained in the paragraphs designated as "44", "45", "46", "47", "48", and "49" of the Verified Complaint.

AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION

7. With respect to that paragraph of the Verified Complaint designated as "50", defendant repeats, reiterates and re-alleges each and every admission, denial, and denial of truth of each and every allegation contained in those paragraphs designated as "1" through "49", with the same force and effect as if set forth fully herein.

8. Denies knowledge and information sufficient to form a belief as to each and every allegation contained in the paragraphs designated as "51", "52", and "53" of the Verified

Complaint, and begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

9. Denies each and every allegation contained in the paragraphs designated as "54" and "55" as to defendant **PETER PAPPAS, M.D.**

AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION

10. With respect to that paragraph of the Verified Complaint designated as "56", defendant repeats, reiterates and re-alleges each and every admission, denial, and denial of truth of each and every allegation contained in those paragraphs designated as "1" through "55", with the same force and effect as if set forth fully herein.

11. Denies knowledge and information sufficient to form a belief as to each and every allegation contained in the paragraphs designated as "57", "58", and "59" of the Verified Complaint, and begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

12. Denies each and every allegation contained in the paragraphs designated as "60" and "61" as to defendant **PETER PAPPAS, M.D.**

AS AND FOR AN ANSWER TO THE FIFTH CAUSE OF ACTION

13. With respect to that paragraph of the Verified Complaint designated as "62", defendant repeats, reiterates and re-alleges each and every admission, denial, and denial of truth of each and every allegation contained in those paragraphs designated as "1" through "61", with the same force and effect as if set forth fully herein.

14. Denies knowledge and information sufficient to form a belief as to each and every allegation contained in the paragraphs designated as "63", "64", and "65" of the Verified Complaint, and begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

15. Denies each and every allegation contained in the paragraphs designated as "66" and "67" as to defendant **PETER PAPPAS, M.D.**

AS AND FOR AN ANSWER TO THE SIXTH CAUSE OF ACTION

16. With respect to that paragraph of the Verified Complaint designated as "68", defendant repeats, reiterates and re-alleges each and every admission, denial, and denial of truth of each and every allegation contained in those paragraphs designated as "1" through "67", with the same force and effect as if set forth fully herein.

17. Denies each and every allegation contained in the paragraphs designated as "69", "70", "71", and "72".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

18. That pursuant to CPLR §1600 et seq., if it is determined by verdict or decision that two or more tortfeasors are jointly liable to the plaintiff, and if the liability of the answering defendant, **PETER PAPPAS, M.D.**, is found to be 50% or less of the total liability assigned to all persons liable, the liability of the answering defendant to the plaintiff for non-economic loss shall not exceed this defendant's equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

19. Upon information and belief, whatever damages the plaintiff may have sustained at the time(s) and place(s) mentioned in the Verified Complaint were caused in whole or in part by the culpable conduct of plaintiff. As a result, the amount of damages recovered, if any, shall therefore be diminished in the proportion to which said culpable conduct is attributable.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

20. In the event said plaintiff recovers a verdict or judgment against the answering defendant, **PETER PAPPAS, M.D.**, said verdict or judgment should be reduced pursuant to CPLR § 4545 by those amounts which have been or will, with reasonable certainty, replace or indemnify plaintiff in whole or in part for any past or future claim to economic loss or collateral source.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

21. The negligence of those responsible for the accident or the occurrence alleged in the Verified Complaint constituted a separate, independent, superseding, intervening act, which constitutes the sole proximate cause of the accident or occurrence alleged.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

22. Upon information and belief, the injuries and damages alleged were caused by the culpable conduct of some third person or persons over whom the answering defendant, **PETER PAPPAS, M.D.**, neither had nor exercised control.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

23. That if the plaintiff was caused to sustain damages at the time and place set forth in plaintiff's Complaint through any carelessness, recklessness and negligence other than plaintiff's own, said damages arose in whole or in part from the negligence of co-defendant(s) or others, and if any judgment is recovered herein by the plaintiff against the answering defendant, **PETER PAPPAS, M.D.**, than the answering defendant will be entitled to contribution on the basis of proportionate responsibility attributable to the co-defendant(s) named above.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

24. Pursuant to Section 15-108 of the General Obligations Law, any recovery by the Plaintiff must be reduced by such amounts and/or such percentages of negligence as may result from settlements or trial with any tortfeasor or others.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

25. The Verified Complaint fails to state a cause or causes of action upon which relief can be granted against the Answering Defendant.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

26. Plaintiff's claims are barred, or subject to reduction, as a result of the Plaintiff's failure to mitigate its damages.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

27. Plaintiffs' claim for lack of informed consent is barred by reason of the applicable provisions of Section 2805(d) of the Public Health Law.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

28. Upon information and belief, whatever damages, if any, suffered by the Plaintiff have been set-off by a prior recovery.

WHEREFORE, Defendant, **PETER PAPPAS, M.D.**, demands judgment dismissing the Verified Complaint of the Plaintiff, together with the costs and disbursements of this action.

To the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of this paper or the contentions herein are not frivolous, as that term is defined in Part 130 of the Court Rules.

Dated: Valhalla, New York
January 9, 2017

Yours, etc.,


KAUFMAN BORGEESE & RYAN LLP

By: Steven D. Weiner, Esq.
Attorneys for Defendant
PETER PAPPAS, M.D.
200 Summit Lake Drive
Valhalla, New York 10595
(914) 449-1000
KBR File No.: 766.116

TO: **MERSON LAW PLLC**
Attorneys for Plaintiff
150 East 58th Street 34th Fl.
New York, NY 10155
212-603-9100

Devendra Patel, M.D.
10 Union Square East, Suite 2B
New York, NY 10003

Mount Sinai Health Network
c/o Mount Sinai Health System
One Gustave L. Levy Place, Box 1009
New York, NY 10029

Mount Sinai Beth Israel Medical Center
10 Nathan D. Perlman Place
New York, NY 10003

Thomas Bernik, M.D.
317 East 17th Street, 12th Floor
New York, NY 10003

Lauren Barlog, M.D.
185 South Orange Avenue, #F538
Newark, NJ 07103

Donnie Beaubrun, M.D.
279 East 3rd Street
New York, NY 10009

VERIFICATION

STATE OF NEW YORK)

COUNTY OF WESTCHESTER)

STEVEN D. WEINER, being duly sworn, states that I am a member of the firm of **KAUFMAN BORGEEST & RYAN LLP**, attorneys for Defendant, **PETER PAPPAS, M.D.**, in this action and that the foregoing **VERIFIED ANSWER** is true to my knowledge, except as to those matters therein stated upon information and belief, and as to those matters I believe them to be true; that the grounds of my belief as to all matters not stated upon my knowledge are correspondence and other writings furnished by the Defendant and other documents maintained in the office of its attorneys; and that the reason why this verification is not made by Defendant is that the Defendant is located in a county other than the county where its attorneys have their office.

Dated: Valhalla, New York
January 9, 2017



STEVEN D. WEINER

Exhibit C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

NATOSHA DUNSTON,

Plaintiff,

VERIFIED ANSWER

Index No. 520070/2016

- against -

DEVENDRA PATEL, M.D., MOUNT SINAI
HEALTH NETWORK, LLC, MOUNT SINAI
BETH ISRAEL MEDICAL CENTER, BETH
ISRAEL MEDICAL CENTER, THOMAS
BERNIK, M.D., LAUREN BARLOG, M.D.,
DONNIE BEAUBRUN, M.D., THE BROOKLYN
HOSPITAL CENTER, and PETER PAPPAS, M.D.,

Defendants.

Defendants, BETH ISRAEL MEDICAL CENTER and BETH ISRAEL MEDICAL
CENTER s/h/a "MOUNT SINAI BETH ISRAEL MEDICAL CENTER," by its attorneys,
AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP, as and for its Answer to
plaintiff's Complaint, respectfully shows to this Court and alleges upon information and belief:

AS AND FOR THE FIRST CAUSE OF ACTION

1. Denies the allegations contained in paragraph(s) "2" in the form alleged except admits
one NATOSHA DUNSTON was treated by defendant DEVENDRA PATEL, M.D. and
respectfully refers to the hospital records for the specifics of the patient's treatment thereat.

2. Denies the allegations contained in paragraph(s) "9" in the form alleged except admits
one NATOSHA DUNSTON was treated by defendant BETH ISRAEL MEDICAL CENTER and
respectfully refers to the hospital records for the specifics of the patient's treatment thereat.

3. Denies the allegations contained in paragraph(s) "13" in the form alleged except admits one NATOSHA DUNSTON was treated at defendant BETH ISRAEL MEDICAL CENTER and respectfully refers to the hospital records for the specifics of the patient's treatment thereat.

4. Denies the allegations contained in paragraph(s) "3", "35" and "36" and respectfully refers all questions of law to this Honorable Court.

5. Denies the allegations contained in paragraph(s) "4", "5", "6", "7", "8", "10", "12", "14", "15", "23", "24", "25", "26" and "27" in the form alleged and respectfully refers all questions of law to this Honorable Court.

6. Denies the allegations contained in paragraph(s) "11" in the form alleged except admits defendant BETH ISRAEL MEDICAL CENTER is located at 10 Nathan D. Perlman Place, New York, New York 10003 and respectfully refers all questions of law to this Honorable Court.

7. Denies the knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph(s) "16", "17", "18", "19", "20", "21", "22", "26", "27", "28", "29", "30", "31", "32", "33" and "34".

8. Denies the allegations contained in paragraph(s) "37", "38", "39", "40", "41" and "42".

AS AND FOR THE SECOND CAUSE OF ACTION

9. In response to paragraph "43", repeats each admission or denial contained in paragraphs "1" through "42" herein as though fully set forth hereat.

10. Denies the allegations contained in paragraph(s) "44", "45", "46", "47", "48" and "49".

AS AND FOR THE THIRD CAUSE OF ACTION

11. In response to paragraph "50", repeats each admission or denial contained in paragraphs "1" through "49" herein as though fully set forth hereat.

12. Denies the allegations contained in paragraph(s) "51" and "52" in the form alleged and respectfully refers all questions of law to this Honorable Court.

13. Denies the allegations contained in paragraph(s) "53", "54" and "55" in the form alleged and respectfully refers all questions of law to this Honorable Court.

AS AND FOR THE FOURTH CAUSE OF ACTION

14. In response to paragraph "56", repeats each admission or denial contained in paragraphs "1" through "55" herein as though fully set forth hereat.

15. Denies the allegations contained in paragraph(s) "57", "58", "59", "60" and "61".

AS AND FOR THE FIFTH CAUSE OF ACTION

16. In response to paragraph "62", repeats each admission or denial contained in paragraphs "1" through "61" herein as though fully set forth hereat.

17. Denies the allegations contained in paragraph(s) "63", "64", "65", "66" and "67".

AS AND FOR THE SIXTH CAUSE OF ACTION

18. In response to paragraph "68", repeats each admission or denial contained in paragraphs "1" through "67" herein as though fully set forth hereat.

19. Denies the knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph(s) "69", "70" and "71".

20. Denies the allegations contained in paragraph(s) "72" and "73".

AS AND FOR THE FIRST AFFIRMATIVE DEFENSE

21. The answering defendant(s) assert those applicable defenses for which provision is made at Public Health Law §2805-d.

AS AND FOR THE SECOND AFFIRMATIVE DEFENSE

22. The liability of the answering defendant(s), if any, is limited pursuant to CPLR Article 16.

AS AND FOR THE THIRD AFFIRMATIVE DEFENSE

23. That the injuries claimed by plaintiff in the complaint were cause in whole or in part, by the culpable conduct of the plaintiff which either bars the claims completely or else diminishes the damages by the proportion that such culpable conduct of the plaintiff bears to the total culpable conduct causing the injuries.

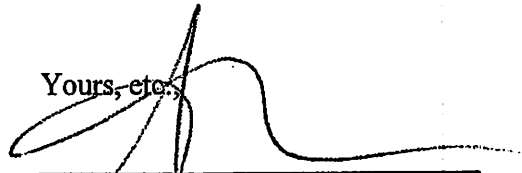
AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE

24. That the plaintiff has been or will be compensated in whole or in part for the damages claimed in the complaint by a collateral source of payment as set forth in CPLR §4545.

WHEREFORE, defendants, BETH ISRAEL MEDICAL CENTER and BETH ISRAEL MEDICAL CENTER s/h/a "MOUNT SINAI BETH ISRAEL MEDICAL CENTER," demands judgment dismissing the Complaint, together with the costs and disbursements of the within action.

Dated: New York, New York
January 13, 2017

Yours, etc.,



BY: ANDREW I. KAPLAN
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendants
BETH ISRAEL MEDICAL CENTER and
BETH ISRAEL MEDICAL CENTER s/h/a
"MOUNT SINAI BETH ISRAEL
MEDICAL CENTER"
Office & P.O. Address
600 Third Avenue
New York, New York 10016
Tel.: (212) 593-6700
DUNSTON 18-665

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

NATOSHA DUNSTON,

Plaintiff,

VERIFIED ANSWER

- against -

Index No. 520070/2016

DEVENDRA PATEL, M.D., MOUNT SINAI
HEALTH NETWORK, LLC, MOUNT SINAI
BETH ISRAEL MEDICAL CENTER, BETH
ISRAEL MEDICAL CENTER, THOMAS
BERNIK, M.D., LAUREN BARLOG, M.D.,
DONNIE BEAUBRUN, M.D., THE BROOKLYN
HOSPITAL CENTER, and PETER PAPPAS, M.D.,

Defendants.

Defendant, DEVENDRA PATEL, M.D., by his attorneys, AARONSON RAPPAPORT
FEINSTEIN & DEUTSCH, LLP, as and for his Answer to plaintiff's Complaint, respectfully
shows to this Court and alleges upon information and belief:

AS AND FOR THE FIRST CAUSE OF ACTION

1. Denies the allegations contained in paragraph(s) "2" in the form alleged except admits
one NATOSHA DUNSTON was treated by defendant DEVENDRA PATEL, M.D. and
respectfully refers to the hospital records for the specifics of the patient's treatment thereat.

2. Denies the allegations contained in paragraph(s) "9" in the form alleged except admits
one NATOSHA DUNSTON was treated at defendant BETH ISRAEL MEDICAL CENTER and
respectfully refers to the hospital records for the specifics of the patient's treatment thereat.

3. Denies the allegations contained in paragraph(s) "13" in the form alleged except
admits one NATOSHA DUNSTON was treated at defendant BETH ISRAEL MEDICAL

CENTER and respectfully refers to the hospital records for the specifics of the patient's treatment thereat.

4. Denies the allegations contained in paragraph(s) "3", "35" and "36" and respectfully refers all questions of law to this Honorable Court.

5. Denies the allegations contained in paragraph(s) "4", "5", "6", "7", "8", "10", "12", "14", "15", "23", "24", "25", "26" and "27" in the form alleged and respectfully refers all questions of law to this Honorable Court.

6. Denies the allegations contained in paragraph(s) "11" in the form alleged except admits defendant BETH ISRAEL MEDICAL CENTER is located at 10 Nathan D. Perlman Place, New York, New York 10003 and respectfully refers all questions of law to this Honorable Court.

7. Denies the knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph(s) "16", "17", "18", "19", "20", "21", "22", "26", "27", "28", "29", "30", "31", "32", "33" and "34".

8. Denies the allegations contained in paragraph(s) "37", "38", "39", "40", "41" and "42".

AS AND FOR THE SECOND CAUSE OF ACTION

9. In response to paragraph "43", repeats each admission or denial contained in paragraphs "1" through "42" herein as though fully set forth hereat.

10. Denies the allegations contained in paragraph(s) "44", "45", "46", "47", "48" and "49".

AS AND FOR THE THIRD CAUSE OF ACTION

11. In response to paragraph "50", repeats each admission or denial contained in paragraphs "1" through "49" herein as though fully set forth hereat.

12. Denies the allegations contained in paragraph(s) "51" and "52" in the form alleged and respectfully refers all questions of law to this Honorable Court.

13. Denies the allegations contained in paragraph(s) "53", "54" and "55" in the form alleged and respectfully refers all questions of law to this Honorable Court.

AS AND FOR THE FOURTH CAUSE OF ACTION

14. In response to paragraph "56", repeats each admission or denial contained in paragraphs "1" through "55" herein as though fully set forth hereat.

15. Denies the allegations contained in paragraph(s) "57", "58", "59", "60" and "61".

AS AND FOR THE FIFTH CAUSE OF ACTION

16. In response to paragraph "62", repeats each admission or denial contained in paragraphs "1" through "61" herein as though fully set forth hereat.

17. Denies the allegations contained in paragraph(s) "63", "64", "65", "66" and "67".

AS AND FOR THE SIXTH CAUSE OF ACTION

18. In response to paragraph "68", repeats each admission or denial contained in paragraphs "1" through "67" herein as though fully set forth hereat.

19. Denies the knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph(s) "69", "70" and "71".

20. Denies the allegations contained in paragraph(s) "72" and "73".

AS AND FOR THE FIRST AFFIRMATIVE DEFENSE

21. The answering defendant(s) assert those applicable defenses for which provision is made at Public Health Law §2805-d.

AS AND FOR THE SECOND AFFIRMATIVE DEFENSE

22. The liability of the answering defendant(s), if any, is limited pursuant to CPLR Article 16.

AS AND FOR THE THIRD AFFIRMATIVE DEFENSE

23. That the injuries claimed by plaintiff in the complaint were cause in whole or in part, by the culpable conduct of the plaintiff which either bars the claims completely or else diminishes the damages by the proportion that such culpable conduct of the plaintiff bears to the total culpable conduct causing the injuries.

AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE

24. That the plaintiff has been or will be compensated in whole or in part for the damages claimed in the complaint by a collateral source of payment as set forth in CPLR §4545.

WHEREFORE, defendant, DEVENDRA PATEL, M.D., demands judgment dismissing the Complaint, together with the costs and disbursements of the within action.

Dated: New York, New York
January 13, 2017

Yours, etc.

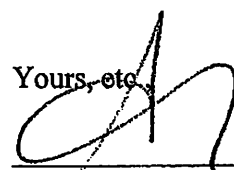

BY: ANDREW I. KAPLAN
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
DEVENDRA PATEL, M.D.
Office & P.O. Address
600 Third Avenue
New York, New York 10016
Tel.: (212) 593-6700
DUNSTON 18-665

Exhibit D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

NATOSHA DUNSTON,

Plaintiff,

VERIFIED ANSWER

- against -

Index No. 520070/2016

DEVENDRA PATEL, M.D., MOUNT SINAI
HEALTH NETWORK, LLC, MOUNT SINAI
BETH ISRAEL MEDICAL CENTER, BETH
ISRAEL MEDICAL CENTER, THOMAS
BERNIK, M.D., LAUREN BARLOG, M.D.,
DONNIE BEAUBRUN, M.D., THE BROOKLYN
HOSPITAL CENTER, and PETER PAPPAS, M.D.,

Defendants.

Defendant, THOMAS BERNIK, M.D., by his attorneys, AARONSON RAPPAPORT
FEINSTEIN & DEUTSCH, LLP, as and for his Answer to plaintiff's Complaint, respectfully
shows to this Court and alleges upon information and belief:

AS AND FOR THE FIRST CAUSE OF ACTION

1. Denies the knowledge or information sufficient to form a belief as to the truth of
allegations contained in paragraph(s) "1", "2", "3", "4", "5", "6", "7", "8", "9", "15", "18", "19",
"20", "21", "28", "29", "30", "31", "32", "33", "34" and "38".

2. Denies knowledge or information sufficient to form a belief as to the truth of
allegations contained in paragraph(s) "10", "11", "12" and "14" and refers questions of law to the
Court.

3. Denies the knowledge or information to form a belief as to the truth of allegations
contained in paragraph(s) "13" and respectfully refers to the hospital records for the specifics of
the patient's treatment thereat

4. Denies the allegations contained in paragraph(s) "17" in the form alleged, respectfully refers to the hospital records for the specifics of the patient's treatment thereat and respectfully refers all questions of law to this Honorable Court.

5. Denies the allegations contained in paragraph(s) "22", "23", "24", "25", "26", "27", "35" and "36" in the form alleged and respectfully refers all questions of law to this Honorable Court.

6. Denies the allegations contained in paragraph(s) "37", "39", "40", "41" and "42".

AS AND FOR THE SECOND CAUSE OF ACTION

7. In response to paragraph "43", repeats each admission or denial contained in paragraphs "1" through "42" herein as though fully set forth hereat.

8. Denies the allegations contained in paragraph(s) "43", "44", "45", "46", "47", "48" and "49".

AS AND FOR THE THIRD CAUSE OF ACTION

9. In response to paragraph "50", repeats each admission or denial contained in paragraphs "1" through "49" herein as though fully set forth hereat.

10. Denies the allegations contained in paragraph(s) "51", "52" and "53" in the form alleged and respectfully refers all questions of law to this Honorable Court.

11. Denies the allegations contained in paragraph(s) "54" and "55".

AS AND FOR THE FOURTH CAUSE OF ACTION

12. In response to paragraph "56", repeats each admission or denial contained in paragraphs "1" through "55" herein as though fully set forth hereat.

13. Denies the allegations contained in paragraph(s) "57", "58" and "59" in the form alleged and respectfully refers all questions of law to this Honorable Court.

14. Denies the allegations contained in paragraph(s) "60" and "61".

AS AND FOR THE FIFTH CAUSE OF ACTION

15. In response to paragraph "62", repeats each admission or denial contained in paragraphs "1" through "61" herein as though fully set forth hereat.

16. Denies the allegations contained in paragraph(s) "63", "64" and "65" in the form alleged and respectfully refers all questions of law to this Honorable Court.

17. Denies the allegations contained in paragraph(s) "66" and "67".

AS AND FOR THE SIXTH CAUSE OF ACTION

18. In response to paragraph "68", repeats each admission or denial contained in paragraphs "1" through "67" herein as though fully set forth hereat.

19. Denies the knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph(s) "69", "70" and "71".

20. Denies the allegations contained in paragraph(s) "72" and "73".

AS AND FOR THE FIRST AFFIRMATIVE DEFENSE

21. This Court lacks in personam jurisdiction over the answering defendant(s).

AS AND FOR THE SECOND AFFIRMATIVE DEFENSE

22. The answering defendant(s) assert those applicable defenses for which provision is made at Public Health Law §2805-d.

AS AND FOR THE THIRD AFFIRMATIVE DEFENSE

23. The liability of the answering defendant(s), if any, is limited pursuant to CPLR Article 16.

AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE

24. That the injuries claimed by plaintiff in the complaint were cause in whole or in part, by the culpable conduct of the plaintiff which either bars the claims completely or else diminishes the damages by the proportion that such culpable conduct of the plaintiff bears to the total culpable conduct causing the injuries.

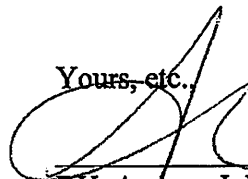
AS AND FOR THE FIFTH AFFIRMATIVE DEFENSE

25. That the plaintiff has been or will be compensated in whole or in part for the damages claimed in the complaint by a collateral source of payment as set forth in CPLR §4545.

WHEREFORE, defendant, THOMAS BERNIK, M.D., demands judgment dismissing the Complaint, together with the costs and disbursements of the within action.

Dated: New York, New York
February 14, 2017

Yours, etc.



BY: Andrew I. Kaplan
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
THOMAS BERNIK, M.D.
Office & P.O. Address
600 Third Avenue
New York, New York 10016
Tel.: (212) 593-6700
DUNSTON 18-665

DUNSTON 18-665

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

ANDREW I. KAPLAN, being duly sworn, deposes and says:

That I am a member in the firm of attorneys representing the defendant THOMAS BERNIK, M.D.

That I have read the attached ANSWER and the same is true to my own belief, except as to matters alleged on information and belief, and as to those matters, I believe them to be true to the best of my knowledge.

My sources of information are a claims file containing statements, reports and records of investigation, investigators, parties and witnesses, with which I am fully familiar.

That this verification is made by me because my clients do not reside within the county where I maintain my office.



ANDREW I. KAPLAN

Sworn to before me this
16th day of February, 2017.



Notary Public

GLORIA E. WILLIAMS
Notary Public, State of New York
No. 01WI5031377
Qualified in Queens County
Commission Expires Aug. 1, 2018

Exhibit E

OB-1166
JBK;ljh

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
NATOSHA DUNSTON,

Index No. 520070/2016

Plaintiff,

VERIFIED ANSWER

-against-

DEVENDRA PATEL, M.D., MOUNT SINAI
HEALTH NETWORK, LLC, MOUNT SINAI
BETH ISRAEL MEDICAL CENTER, BETH
ISRAEL MEDICAL CENTER, THOMAS BERNIK,
M.D., LAUREN BARLOG, M.D., DONNIE
BEAUBRUN, M.D., THE BROOKLYN HOSPITAL
CENTER and PETER PAPPAS, M.D.

Defendants.

-----X

Defendant, DONNIE BEAUBRUN, M.D., by attorneys, FUMUSO,
KELLY, SWART, FARRELL, POLIN & CHRISTESEN, LLP as and for his
Verified Answer to the Verified Complaint of the plaintiff
herein, respectfully alleges upon information and belief as
follows:

ANSWERING THE FIRST CAUSE OF ACTION:

FIRST: Denies knowledge or information sufficient to
form a belief as to each and every allegation contained in
paragraphs numbered and designated "1", "2", "3", "4", "5", "6",
"7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17",
"18" and "19" of the plaintiff's Verified Complaint and
respectfully submits all questions of fact and law to this
Honorable Court.

SECOND: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph numbered and designated "20" of the plaintiff's Verified Complaint, except admits DONNIE BEAUBRUN, M.D. was and is a physician duly licensed under the laws of the State of New York and respectfully submits all questions of fact and law to this Honorable Court.

THIRD: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs numbered and designated "22", "23", "24" and "25" of the plaintiff's Verified Complaint and respectfully submits all questions of fact and law to this Honorable Court.

FOURTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs numbered and designated "26", "27", "28", "29", "30", "32", "32" "33", "34", "35" and "36" of the plaintiff's Verified Complaint and respectfully submits all questions of fact and law to this Honorable Court.

FIFTH: Denies each and every allegation contained in paragraphs numbered and designated "37", "38", "39", "40", "41" and "42" of the plaintiff's Verified Complaint.

ANSWERING THE SECOND CAUSE OF ACTION:

SIXTH: With respect to paragraph "43" of the plaintiff's Verified Complaint, the defendant repeats and realleges paragraphs numbered and designated "FIRST" through

"FIFTH," inclusive of this Answer.

SEVENTH: Denies each and every allegation contained in paragraphs numbered and designated "44", "45", "46", "47" "48" and "49" of the plaintiff's Verified Complaint.

ANSWERING THE THIRD CAUSE OF ACTION:

EIGHTH: With respect to paragraph "50" of the plaintiff's Verified Complaint, the defendant repeats and realleges paragraphs numbered and designated "FIRST" through "SEVENTH," inclusive of this Answer.

NINTH: Denies each and every allegation contained in paragraphs numbered and designated "51", "52", "53", "54" and "55" of the plaintiff's Verified Complaint.

ANSWERING THE FOURTH CAUSE OF ACTION

TENTH: With respect to paragraph "56" of the plaintiff's Verified Complaint, the defendant repeats and realleges paragraphs numbered and designated "FIRST" through "NINTH," inclusive of this Answer.

ELEVENTH: Denies each and every allegation contained in paragraphs numbered and designated "57", "58", "59", "60" and "61" of the plaintiff's Verified Complaint.

ANSWERING THE FIFTH CAUSE OF ACTION:

TWELFTH: With respect to paragraph "62" of the plaintiff's Verified Complaint, the defendant repeats and realleges paragraphs numbered and designated "FIRST" through "ELEVENTH," inclusive of this Answer.

THIRTEENTH: Denies each and every allegation contained in paragraphs numbered and designated "63", "64", "65", "66" and "67" of the plaintiff's Verified Complaint.

ANSWERING THE SIXTH CAUSE OF ACTION:

FOURTEENTH: With respect to paragraph "68" of the plaintiff's Verified Complaint, the defendant repeats and realleges paragraphs numbered and designated "FIRST" through "THIRTEENTH," inclusive of this Answer.

FIFTEENTH: Denies each and every allegation contained in paragraphs numbered and designated "69", "70", "71", "72" and "73" of the plaintiff's Verified Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

SIXTEENTH: DONNIE BEAUBRUN, M.D. is an employee of the William F. Ryan Community Health Center and the care rendered in this case was as a result of that relationship. William F. Ryan Community Health Care Center is a Health Center afforded protection as a Federally deemed Health Center under the Federally Deemed Health Centers Assistance Act and it can only be sued under the Federal Torts Claims Act in the appropriate Federal Court. DONNIE BEAUBRUN, M.D. as an employee who fulfills the requirements of the Act's individual protection provision and whose care was rendered based on his relationship with the facility is also afforded protection under the law and thus can only be sued in Federal Court under the Federal Torts Claims Act and this court lacks jurisdiction over this matter.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

SEVENTEENTH: That the within action and/or the cause of action against defendant is barred as not having been brought within the time prescribed by statute or rule of law.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

EIGHTEENTH: That in the event of any judgment or verdict on behalf of the plaintiff, this answering defendant is entitled to a setoff with respect to the amount of any payments made to the plaintiff prior thereto.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

NINETEENTH: That the injuries of the plaintiff was caused in whole or in part by his own contributory negligence and/or culpable conduct and/or by persons and/or events over which this defendant had no control and his claims are therefore barred or the amount of same is diminished accordingly.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

TWENTIETH: Upon information and belief, plaintiff has received remuneration and/or compensation for some or all of his claimed economic loss and answering defendant is entitled to have any verdict or judgment reduced by the amount of that remuneration or compensation pursuant to CPLR 4545.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

TWENTY-FIRST: That if any liability is found as against this answering defendant, then said liability will constitute 50% or less of the total liability assigned to all

persons liable and, as such, the liability of this answering defendant to plaintiff for non-economic loss shall be limited and shall not exceed this answering defendant's equitable share, as provided in Article 16 of the CPLR.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

TWENTY-SECOND: That the defendant shall be entitled to a set off pursuant to the General Obligations Law §15-108 for reduction in the claim of the Releasor against them to the extent of any amount stipulated by a prior release or covenant, or the amount of consideration paid for it, or the amount of the released tortfeasor's equitable share of the damages under Article 14 of the CPLR, whichever is the greatest.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

TWENTY-THIRD: That the plaintiff's Complaint and/or the cause of action fails to state a cause of action against the answering defendant.

WHEREFORE, defendant demands judgment dismissing the plaintiff's Verified Complaint herein, together with the costs and disbursements of this action.

Dated: Hauppauge, New York
March 17, 2017

Respectfully submitted,

FUMUSO, KELLY, SWART, FARRELL,
POLIN & CHRISTESEN, LLP
Attorneys for Defendant
DONNIE BEAUBRUN, M.D.
110 Marcus Boulevard
Hauppauge, New York 11788-3704
(631) 232-0200

MERSON LAW, PLLC
Attorney for Plaintiff
150 East 58th Street, 34th Floor
New York, New York 10155
(212) 603-9100

OB-1166
JBK;ljh

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
NATOSHA DUNSTON,

Index No. 520070/2016

Plaintiff,

CERTIFICATION

-against-

DEVENDRA PATEL, M.D., MOUNT SINAI
HEALTH NETWORK, LLC, MOUNT SINAI
BETH ISRAEL MEDICAL CENTER, BETH
ISRAEL MEDICAL CENTER, THOMAS BERNIK,
M.D., LAUREN BARLOG, M.D., DONNIE
BEAUBRUN, M.D., THE BROOKLYN HOSPITAL
CENTER and PETER PAPPAS, M.D.

Defendants.

-----X

JORDAN B. KARP, ESQ., an attorney admitted to practice
in the Courts of New York State, certifies that the within has
been compared by me with the original and found to be a true and
complete copy.

I affirm that the foregoing statements are true, under
the penalties of perjury.

Dated: Hauppauge, New York
March 17, 2017



JORDAN B. KARP, ESQ.

OB-1166

JBK;ljh

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
NATOSHA DUNSTON,

Index No. 520070/2016

Plaintiff,

VERIFICATION

-against-

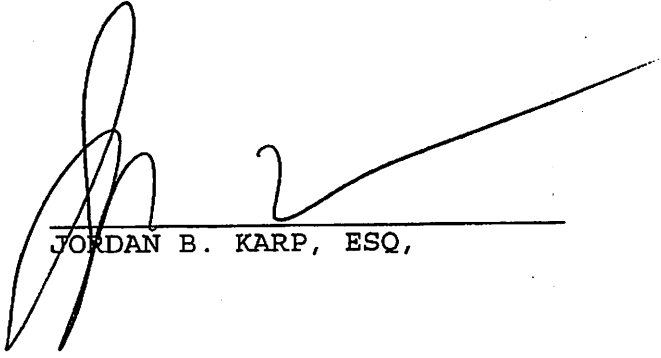
DEVENDRA PATEL, M.D., MOUNT SINAI
HEALTH NETWORK, LLC, MOUNT SINAI
BETH ISRAEL MEDICAL CENTER, BETH
ISRAEL MEDICAL CENTER, THOMAS BERNIK,
M.D., LAUREN BARLOG, M.D., DONNIE
BEAUBRUN, M.D., THE BROOKLYN HOSPITAL
CENTER and PETER PAPPAS, M.D.

Defendants.

-----X
STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss.:

JORDAN B. KARP, ESQ., the undersigned, an attorney
admitted to practice in the Courts of New York State, state that I
am the attorney of record for the defendant, DONNIE BEAUBRUN, M.D.,
in the within action; I have read the foregoing Verified Answer and
Demands and know the contents thereof; the same is true to my own
knowledge, except as to matters therein stated to be alleged upon
information and belief and, as to those matters, I believe them to
be true. The reason this verification is made by me and not by the
defendant is because defendant does not reside within the county
that our office is located.

Dated: Hauppauge, New York
March 17, 2017



JORDAN B. KARP, ESQ,

Exhibit F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

_____X

NATOSHA DUNSTON,

VERIFIED ANSWER

Index No. 520070/2016

Plaintiff,

- against -

DEVENDRA PATEL, M.D., MOUNT SINAI
HEALTH NETWORK, LLC, MOUNT SINAI
BETH ISRAEL MEDICAL CENTER, BETH
ISRAEL MEDICAL CENTER, THOMAS
BERNIK, M.D., LAUREN BARLOG, M.D.,
DONNIE BEAUBRUN, M.D., THE BROOKLYN
HOSPITAL CENTER, and PETER PAPPAS, M.D.,

Defendants.

_____X

Defendant, LAUREN BARLOG, M.D., by her attorneys, AARONSON RAPPAPORT
FEINSTEIN & DEUTSCH, LLP, as and for her Answer to plaintiff's Complaint, respectfully
shows to this Court and alleges upon information and belief:

AS AND FOR THE FIRST CAUSE OF ACTION

1. Denies the knowledge or information sufficient to form a belief as to the truth of
allegations contained in paragraph(s) "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12",
"13", "14", "15", "16", "17", "20", "21", "28", "29", "30", "32", "33" and "34".

2. Denies the allegations contained in paragraph(s) "19" in the form alleged except admits defendant LAUREN BARLOG, M.D. treated one NATOSHA DUNSTON and respectfully refers to the hospital records for the specifics of the patient's treatment thereat.

3. Denies the allegations contained in paragraph(s) "22", "23", "24", "25", "26", "27", "31", "35", and "36" in the form alleged and respectfully refers all questions of law to this Honorable Court.

4. Denies the allegations contained in paragraph(s) "37", "38", "39", "40", "41" and "42".

AS AND FOR THE SECOND CAUSE OF ACTION

5. In response to paragraph "43", repeats each admission or denial contained in paragraphs "1" through "42" herein as though fully set forth hereat.

6. Denies the allegations contained in paragraph(s) "44", "45", "46", "47", "48" and "49".

AS AND FOR THE THIRD CAUSE OF ACTION

7. In response to paragraph "50", repeats each admission or denial contained in paragraphs "1" through "49" herein as though fully set forth hereat.

8. Denies the allegations contained in paragraph(s) "51", "52", "53", "54" and "55".

AS AND FOR THE FOURTH CAUSE OF ACTION

9. In response to paragraph "56", repeats each admission or denial contained in paragraphs "1" through "55" herein as though fully set forth hereat.

10. Denies the allegations contained in paragraph(s) "57", "58", "59", "60" and "61".

AS AND FOR THE FIFTH CAUSE OF ACTION

11. In response to paragraph "62", repeats each admission or denial contained in paragraphs "1" through "61" herein as though fully set forth hereat.

12. Denies the allegations contained in paragraph(s) "63", "64", "65", "66" and "67".

AS AND FOR THE SIXTH CAUSE OF ACTION

13. In response to paragraph "68", repeats each admission or denial contained in paragraphs "1" through "67" herein as though fully set forth hereat.

14. Denies the knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph(s) "69", "70" and "71".

15. Denies the allegations contained in paragraph(s) "72" and "73".

AS AND FOR THE FIRST AFFIRMATIVE DEFENSE

16. The answering defendant(s) assert those applicable defenses for which provision is made at Public Health Law §2805-d.

AS AND FOR THE SECOND AFFIRMATIVE DEFENSE

17. The liability of the answering defendant(s), if any, is limited pursuant to CPLR Article 16.

AS AND FOR THE THIRD AFFIRMATIVE DEFENSE

18. That the injuries claimed by plaintiff in the complaint were cause in whole or in part, by the culpable conduct of the plaintiff which either bars the claims completely or else diminishes the damages by the proportion that such culpable conduct of the plaintiff bears to the total culpable conduct causing the injuries.

AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE

19. That the plaintiff has been or will be compensated in whole or in part for the damages claimed in the complaint by a collateral source of payment as set forth in CPLR §4545.

WHEREFORE, defendant, LAUREN BARLOG, M.D., demands judgment dismissing the Complaint, together with the costs and disbursements of the within action.

Dated: New York, New York
April 6, 2017

Yours, etc.,


BY: Andrew I. Kaplan
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
LAUREN BARLOG, M.D.
Office & P.O. Address
600 Third Avenue
New York, New York 10016
Tel.: (212) 593-6700
DUNSTON 18-665

NYSCEF DOC. NO. 23

RECEIVED NYSCEF: 04/07/2017

DUNSTON 18-665

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
 SS:
COUNTY OF NEW YORK)

Andrew I. Kaplan, being duly sworn, deposes and says:

That I am a member in the firm of attorneys representing the defendant LAUREN BARLOG, M.D.

That I have read the attached and the same is true to my own belief, except as to matters alleged on information and belief, and as to those matters, I believe them to be true to the best of my knowledge.

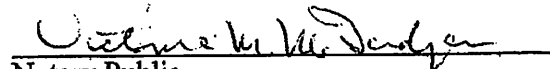
My sources of information are claims filed containing statements, reports and records of investigation, investigators, parties and witnesses, with which I am fully familiar.

That this verification is made by me because my client does not reside within the county where I maintain my office.



ANDREW I. KAPLAN

Sworn to before me this
1st day of April, 2017.


Notary Public

VICTORIA M. MCFADYEN
Notary Public, State of New York
No. 01MC4759374
Qualified in Kings County
My Commission Expires Nov. 15, 2018

Exhibit G

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Natosha Dunston,

Plaintiff,

v.

Case No.

Devendra Patel, M.D.,
Mount Sinai Health Network, LLC,
Mount Sinai Beth Israel Medical Center,
Beth Israel Medical Center,
Thomas Bernik, M.D.,
Lauren Barlog, M.D.,
Donnie Beaubrun, M.D.,
The Brooklyn Hospital Center,
and Peter Pappas, M.D.,

Defendants.

DECLARATION OF
MEREDITH TORRES

1. I am a Senior Attorney in the General Law Division, Office of the General Counsel, Department of Health and Human Services (the "Department"). I am familiar with the official records of administrative tort claims maintained by the Department as well as with the system by which those records are maintained.

2. The Department has a Claims Branch that maintains in a computerized database a record of administrative tort claims filed with the Department, including those filed with respect to federally supported health centers that have been deemed to be eligible for Federal Tort Claims Act malpractice coverage.

3. As a consequence, if a tort claim had been filed with the Department with respect to William F. Ryan Community Health Center, Inc., its approved delivery sites, or its employees or

-2-

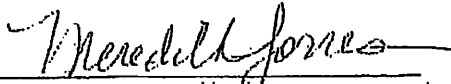
qualified contractors, a record of that filing would be maintained in the Claims Branch's database.

4. I caused a search of the Claims Branch's database to be conducted and found no record of an administrative tort claim filed by Natosha Dunston or an authorized representative relating to William F. Ryan Community Health Center, Inc., and/or Donnie Beaubrun, M.D.

5. I have also reviewed official Agency records and determined that William F. Ryan Community Health Center, Inc., was deemed eligible for Federal Tort Claims Act malpractice coverage effective January 1, 2013, and that its coverage has continued without interruption since that time. The Secretary of Health and Human Services' authority to deem entities as Public Health Service employees under 42 U.S.C. § 233(g) has been delegated to the Associate Administrator, Bureau of Primary Health Care, Health Resources and Services Administration. Copies of the notifications by the Associate Administrator, Bureau of Primary Health Care, Health Resources and Services Administration, Department of Health and Human Services, to William F. Ryan Community Health Center, Inc., are attached to this declaration as Exhibit 1.

I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746.


Dated at Washington, D.C., this 28th day of September, 2017.





MEREDITH TORRES


Senior Attorney, Claims and Employment Law Branch
General Law Division
Office of the General Counsel
Department of Health and Human Services

Exhibit 1

1. ISSUE DATE: 8/28/2012	<p>DEPARTMENT OF HEALTH AND HUMAN SERVICES HEALTH RESOURCES AND SERVICES ADMINISTRATION</p>  <p>NOTICE OF DEEMING ACTION</p> <p>FEDERAL TORT CLAIMS ACT AUTHORIZATION: Federally Supported Health Centers Assistance Act (FSHCAA), as amended, Sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. § 233(g)-(n)</p>
2a. FTCA DEEMING NOTICE NO.: 1-F00000849-12-02	
2b. Supersedes: []	
3. COVERAGE PERIOD: FROM: 1/1/2013 THROUGH: 12/31/2013	
4. NOTICE TYPE: Renewal	
5a. ENTITY NAME AND ADDRESS: William F. Ryan Community Health Center, Inc. 110 WEST 97TH STREET NEW YORK, NY 10025-8450	
6. ENTITY TYPE: Grantee	
7. EXECUTIVE DIRECTOR: Barbra E Minch	
8a. GRANTEE ORGANIZATION: William F. Ryan Community Health Center, Inc.	<p>9. THIS ACTION IS BASED ON THE INFORMATION SUBMITTED TO, AND AS APPROVED BY HRSA, AS REQUIRED UNDER 42 U.S.C. § 233(h) FOR THE ABOVE TITLED ENTITY AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:</p> <ul style="list-style-type: none"> a. The authorizing program legislation cited above. b. The program regulation cited above, and, c. HRSA's FTCA-related policies and procedures. <p>In the event there are conflicting or otherwise inconsistent policies applicable to the program, the above order of precedence shall prevail.</p>
8b. GRANT NUMBER: H80CS00081	
10. Remarks:	
The check box [x] in the supersedes field indicates that this notice supersedes any and all active NDAs and rescinds any and all future NDAs issued prior to this notice.	
Electronically signed by Jim Macrae, Associate Administrator for Primary Health Care on: 8/28/2012 8:24:53 AM	

1. ISSUE DATE: 7/3/2013	<p>DEPARTMENT OF HEALTH AND HUMAN SERVICES HEALTH RESOURCES AND SERVICES ADMINISTRATION</p>  <p>NOTICE OF DEEMING ACTION</p> <p>FEDERAL TORT CLAIMS ACT AUTHORIZATION: Federally Supported Health Centers Assistance Act (FSHCAA), as amended, Sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. § 233(g)-(n)</p>
2a. FTCA DEEMING NOTICE NO.: 1-F00000949-13-01	
2b. Supersedes: []	
3. COVERAGE PERIOD: FROM: 1/1/2014 THROUGH: 12/31/2014	
4. NOTICE TYPE: Renewal	
5a. ENTITY NAME AND ADDRESS: William F. Ryan Community Health Center, Inc. 110 WEST 97TH STREET NEW YORK, NY 10025-6450	
6. ENTITY TYPE: Grantee	
7. EXECUTIVE DIRECTOR: Barbra E Minch	
8a. GRANTEE ORGANIZATION: William F. Ryan Community Health Center, Inc.	<p>9. THIS ACTION IS BASED ON THE INFORMATION SUBMITTED TO, AND AS APPROVED BY HRSA, AS REQUIRED UNDER 42 U.S.C. § 233(h) FOR THE ABOVE TITLED ENTITY AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:</p> <ul style="list-style-type: none"> a. The authorizing program legislation cited above. b. The program regulation cited above, and, c. HRSA's FTCA-related policies and procedures. <p>In the event there are conflicting or otherwise inconsistent policies applicable to the program, the above order of precedence shall prevail.</p> <p>10. Remarks:</p>
8b. GRANT NUMBER: H80CS00081	
<p>The check box [x] in the supersedes field indicates that this notice supersedes any and all active NDAs and rescinds any and all future NDAs issued prior to this notice.</p> <p>Electronically signed by Jim Macrae, Associate Administrator for Primary Health Care on: 7/3/2013 4:54:54 PM</p>	

1. ISSUE DATE: 6/19/2014	<p style="text-align: center;">DEPARTMENT OF HEALTH AND HUMAN SERVICES HEALTH RESOURCES AND SERVICES ADMINISTRATION</p> <p style="text-align: center;"></p> <p style="text-align: center;">NOTICE OF DEEMING ACTION</p> <p>FEDERAL TORT CLAIMS ACT AUTHORIZATION: Federally Supported Health Centers Assistance Act (FSHCAA), as amended, Sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. § 233(g)-(n)</p>
2a. FTCA DEEMING NOTICE NO.: 1-F00000949-14-01	
2b. Supersedes: []	
3. COVERAGE PERIOD: FROM: 1/1/2015 THROUGH: 12/31/2015	
4. NOTICE TYPE: Renewal	
5a. ENTITY NAME AND ADDRESS: William F. Ryan Community Health Center, Inc. 110 WEST 97TH STREET NEW YORK, NY 10026-6450	
6. ENTITY TYPE: Grantee	
7. EXECUTIVE DIRECTOR: Barbra E Minch	
8a. GRANTEE ORGANIZATION: William F. Ryan Community Health Center, Inc.	
8b. GRANT NUMBER: H80CS00051	
<p>9. THIS ACTION IS BASED ON THE INFORMATION SUBMITTED TO, AND AS APPROVED BY HRSA, AS REQUIRED UNDER 42 U.S.C. § 233(h) FOR THE ABOVE TITLED ENTITY AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:</p> <ul style="list-style-type: none"> a. The authorizing program legislation cited above. b. The program regulation cited above, and, c. HRSA's FTCA-related policies and procedures. <p>In the event there are conflicting or otherwise inconsistent policies applicable to the program, the above order of precedence shall prevail.</p>	
<p>10. Remarks:</p>	
<p>The check box [x] in the supersedes field indicates that this notice supersedes any and all active NDAs and rescinds any and all future NDAs issued prior to this notice.</p>	
<p>Electronically signed by Jim Maorae, Associate Administrator for Primary Health Care on: 6/19/2014 9:50:24 AM</p>	

1. ISSUE DATE: 6/15/2015	<p style="text-align: center;">DEPARTMENT OF HEALTH AND HUMAN SERVICES HEALTH RESOURCES AND SERVICES ADMINISTRATION</p>  <p style="text-align: center;">NOTICE OF DEEMING ACTION</p> <p style="text-align: center;">FEDERAL TORT CLAIMS ACT AUTHORIZATION:</p> <p style="text-align: center;">Federally Supported Health Centers Assistance Act (FSHCAA), as amended, Sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. § 233(g)-(n)</p>
2a. FTCA DEEMING NOTICE NO.: 1-F00000949-15-01	
2b. Supersedes: []	
3. COVERAGE PERIOD: FROM: 1/1/2016 THROUGH: 12/31/2016	
4. NOTICE TYPE: Renewal	
5a. ENTITY NAME AND ADDRESS: William F. Ryan Community Health Center, Inc. 110 WEST 97TH STREET NEW YORK, NY 10025-6450	
6. ENTITY TYPE: Grantee	
7. EXECUTIVE DIRECTOR: Brian McIndoe	
8a. GRANTEE ORGANIZATION: William F. Ryan Community Health Center, Inc.	<p>9. THIS ACTION IS BASED ON THE INFORMATION SUBMITTED TO, AND AS APPROVED BY HRSA, AS REQUIRED UNDER 42 U.S.C. § 233(h) FOR THE ABOVE TITLED ENTITY AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:</p> <ul style="list-style-type: none"> a. The authorizing program legislation cited above. b. The program regulation cited above, and, c. HRSA's FTCA-related policies and procedures. <p>In the event there are conflicting or otherwise inconsistent policies applicable to the program, the above order of precedence shall prevail.</p>
8b. GRANT NUMBER: H80CS00061	
10. Remarks:	

The check box ☒ in the supersedes field indicates that this notice supersedes any and all active NDAs and rescinds any and all future NDAs issued prior to this notice.

Electronically signed by Tonya Bowers, Deputy Associate Administrator for Primary Health Care on: 6/15/2015 6:44:52 PM


FTCA DEEMING NOTICE NO.: 1-F00000949-15-01	GRANT NUMBER: H80CS00061	
<p>William F. Ryan Community Health Center, Inc. 110 WEST 97TH STREET NEW YORK, NY10025-6450</p> <p>Dear Brian McIndoe:</p> <p>The Health Resources and Services Administration (HRSA), in accordance with the Federally Supported Health Centers Assistance Act (FSHCAA), as amended, sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. §§ 233(g)-(n), deems William F. Ryan Community Health Center, Inc. to be an employee of the PHS, for the purposes of section 224, effective 1/1/2016 through 12/31/2016.</p> <p>Section 224(a) of the PHS Act provides liability protection under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2672, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under the FTCA, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by PHS employees while acting within the scope of such employment. This protection is exclusive of any other civil action or proceeding. Coverage extends to deemed entities and their (1) officers; (2) governing board members; (3) full- and part-time employees; and (4) contractors who are licensed or certified individual health care practitioners providing full-time services (i.e., on average at least 32½ hours per week for the entity for the period of the contract), or, if providing an average of less than 32½ hours per week of such service, are licensed or certified providers in the fields of family practice, general internal medicine, general pediatrics, or obstetrics/gynecology. Volunteers are neither employees nor contractors and therefore are not eligible for FTCA coverage under FSHCAA.</p> <p>This Notice of Deeming Action (NDA) is also confirmation of medical malpractice coverage for both William F. Ryan Community Health Center, Inc. and its covered individuals as described above. This NDA, along with documentation confirming employment or contractor status with the deemed entity, may be used to show liability coverage for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by PHS employees while acting within the scope of such employment.</p> <p>In addition, FTCA coverage is comparable to an "occurrence" policy without a monetary cap. Therefore, any coverage limits that may be mandated by other organizations are met.</p> <p>This action is based on the information provided in your FTCA deeming application, as required under 42 U.S.C. § 233(h), with regard to your entity's: (1) implementation of appropriate policies and procedures to reduce the risk of malpractice and litigation; (2) review and verification of professional credentials and privileges, references, claims history, fitness, professional review organization findings, and licensure status of health professionals; (3) cooperation with the Department of Justice (DOJ) in the defense of claims and actions to prevent claims in the future; and (4) cooperation with DOJ in providing information related to previous malpractice claims history.</p> <p>Deemed health centers must continue to receive funding under Section 330 of the PHS Act, 42 U.S.C. § 254b, in order to maintain coverage as a deemed PHS employee. If the deemed entity loses its Section 330 funding, such coverage will end immediately upon termination of the grant. In addition to the relevant statutory and regulatory requirements, every deemed health center is expected to follow HRSA's FTCA-related policies and procedures, which may be found online at http://www.bphc.hrsa.gov.</p> <p>For further information, please contact your HRSA Project Officer as listed on your Notice of Grant Award or the Bureau of Primary Health Care (BPHC) Help Line at 1-877-974-2742 or bphchelp@hrsa.gov.</p>		

Exhibit H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NATOSHA DUNSTON,

Plaintiff,

Civil Action No. 17-CV-_____

v.

(_____, J.)

(_____, M.J.)

DEVENDRA PATEL, M.D., MOUNT SINAI
HEALTH NETWORK, LLC, MOUNT SINAI
BETH ISRAEL MEDICAL CENTER, BETH
ISRAEL MEDICAL CENTER, THOMAS
BERNIK, M.D., LAUREN BARLOG, M.D.,
DONNIE BEAUBRUN, M.D., THE
BROOKLYN HOSPITAL CENTER, and,
PETER PAPPAS, M.D.,

Defendants.


**CERTIFICATION OF SCOPE OF EMPLOYMENT AND NOTICE OF
SUBSTITUTION OF UNITED STATES AS PARTY DEFENDANT FOR
DONNIE BEAUBRUN, M.D.**

By virtue of the authority vested in this Office by the Attorney General pursuant to 28 C.F.R. § 15.4, it is hereby certified on the basis of the information now available with respect to the incident alleged in the Verified Complaint, that Defendant Donnie Beaubrun, M.D., was acting within the scope and course of his federal employment as an employee of William F. Ryan Community Health Center, Inc. (the "Health Center"), an approved delivery site under the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233(g)-(n) ("FSHCAA"), and grantee of the United States Department of Health and Human Services, at the time of the incident over which the above-referenced action arose. Accordingly, pursuant to 42 U.S.C. § 233(a), (c), (g), and 28 U.S.C. § 2679(d)(2), the United States of America is hereby substituted by operation of law as a party defendant for Defendant Dr. Beaubrun, and any and all claims asserted in the Verified Complaint against Defendant Dr. Beaubrun shall be, and hereby are, deemed to be claims

for relief against the United States of America.

Dated: Brooklyn, New York
December 7, 2017

BRIDGET M. ROHDE
Acting United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

By: 
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Beth Israel Medical Center s/h/a "Mount Sinai Beth Israel Medical Center"

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